

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Dana Goins,
Petitioner

vs

Case No. 1:01cv185
(Weber, J.)

Mark Sanders,
Respondent

ORDER

On July 23, 2004, this Court denied petitioner's motion to reopen his habeas corpus action which the Court had previously dismissed as barred from review under the one year statute of limitations set forth in 28 U.S. C. § 2244(d). (Doc. 41). This matter is before the Court on petitioner's August 20, 2004 motion for an extension of time in which to file his notice of appeal from the Court's Order denying reopening. (Doc. 42).

Rule 4(a)(5)(A) of the Federal Rules of Appellate Procedure permits the district court to extend the time to file a notice of appeal if a party moves for the extension no later than 30 days after the time prescribed for filing the notice expires (which is thirty days after the district court judgment or order is entered), upon a showing of "excusable neglect or good cause." Rule 4 (a)(5)(B) further

permits the court to rule on the motion ex parte when the motion is filed before the expiration of the thirty day period required for filing the notice of appeal. Extensions are limited to the later of thirty days after the prescribed time for filing the notice of appeal or 10 days after the date when the order granting the extension is entered. Fed. R. App. P. 4(a)(5)(C).

In this case, petitioner filed his motion for an extension of time before the thirty day period for filing a notice of appeal expired. Therefore, his motion is timely filed. His reason for requesting additional time to file his notice of appeal is that he has not received the Court's ruling on his motion to file a notice of appeal exceeding the twenty page limit. (Doc. 42). As evidenced by the docket sheet, the Court has no record of ever receiving petitioner's motion to expand the twenty page limit. Nevertheless, because petitioner is proceeding pro se and evidently unaware that his motion concerning the page limit was never filed, this Court finds that petitioner has satisfied the good cause requirement. Accordingly, this Court **GRANTS** petitioner's motion (Doc. 42) for an extension of time to file his notice of appeal through September 22, 2004.¹

Since this Court does not have a copy of petitioner's motion for leave to file a lengthy notice of appeal, this Court is not privy to the basis for that request. As a general matter, however, a notice of appeal is extremely brief. The Court directs petitioner to Form 1 appended to the Federal Rules of Appellate Procedure as a guide to preparing his notice of appeal.

IT IS SO ORDERED.

Date: 8/25/05

S/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court

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¹Petitioner requests an extension through September 23, 2004. (Doc. 42). By this Court's calculations, that is one day more than the rules allow. Fed. R. App. P. 4(a)(5)(C). Accordingly, petitioner's extension is through September 22, 2004.